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**Cc:** []  
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**From:** CN=Tom Hagler/OU=R9/O=USEPA/C=US  
**Sent:** Mon 9/17/2012 7:52:41 PM  
**Subject:** RE: Interplay between WQCP process and new BDCP

Let's see. In reverse order:

Carl's gathering was actually very fun. Got to see some old friends and meet some folks I had been hearing about for 30 years but never met.

Art actually did some outreach to EPA. He, Karen and I had a long talk maybe two weeks back. And we are sending, for the time being, an observer to these meetings. If we get into confidentiality agreements, we'll probably drop out. Could be a huge time drain, but they are still at the formative stage so its hard to react.

On the Yosemite panel: I'm here in town today (which is booked) and tomorrow (which is less booked). Then I'm in most of next week. I'd be happy to talk to you about all these things, and have even thought about most of them. Figure out what works for you.

Hope you had fun at the convention. I certainly had an adventure in the southern Sierra.

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**From:** "Hal Candee" <hcandee@altshulerberzon.com>  
**To:** Tom Hagler/R9/USEPA/US@EPA  
**Date:** 09/17/2012 11:55 AM  
**Subject:** RE: Interplay between WQCP process and new BDCP

Hey Tom:

Roger Moore and Ellen Hanak have asked me to do a panel at Yosemite next month on this very issue. My co-presenters are Tam Doduc and Cliff Schulz of Kronick/Kern Co. fame. Now I wish I had attended your meeting. Plus now we have the results of the EPA ANPR process. So much to cover. Got any time for a tutorial?

By the way, Alan Short and the Tribes group have hired Art Baggett to mediate the Jerry Meral-RRC "settlement" process and he is coming to my office this Wed at 3 pm to tell me why I should think nice thoughts about it. Gary has given me some hard questions to ask him. Want to come and watch the show? I don't see why EPA shouldn't get the benefit of Art's candid disclosures.....

Sorry I missed Carl's party. Hope it was great.

Hal

From: Tom Hagler [mailto:Hagler.Tom@epamail.epa.gov]

Sent: Monday, June 04, 2012 3:14 PM

To: Hal Candee

Subject: Interplay between WQCP process and new BDCP

The new BDCP idea is, as far as I can tell, to use a "decision tree" or "adaptive science" or whatever you call it to determine what operations of the new facility will be, fifteen years from now when it is finally completed.

There are a host of issues associated with this idea. Like, for example, how do you get a change in the POD, or a 404 permit, or a BO, if you can't tell the applicable regulatory agency what you're planning on doing with that \$15 billion tunnel?

But suspend disbelief.

The way Jerry M. described this new idea is that the water contractors would use the 15 year construction phase to "prove" that habitat improvements rather than more flow are the ticket to a better estuary. In theory, this is starting to sound like a "VAMP" type idea, where we agreed up front to 12 or so years of "experiments". In the VAMP, the two hypotheses were "It's flow" v. "It's exports." Keep in mind that VAMP was controversial. We (the regulators) had to be able to conclude that these were "protective experiments" that would under all test conditions protect the sensitive uses (or endangered species under ESA).

Now keep in mind that the State Board, pursuant to the Strategic Plan it adopted maybe 5 years ago, is doing both scoping and workshops for the Delta flows part of the WQCP. This plan has not been substantively changed in maybe 17 years. The water export community has been doing an aggressive campaign to delay this pending the completion of the BDCP, but the Board (and the DSC) have said, no, get it done.

So my question is this: A Board decision on a new flow regime would be probably 2 -4 years down the road, followed by litigation, etc etc. The BDCP "decision tree" set of experiments needs to account for this change in the flow regime, or else the "experimental design" is flawed.

So the general question is how does this new BDCP idea mesh with the Board's process?

Stated scientifically, if the BDCP contractors would like to show that flow is NOT the problem, how do you set up a set of experiments that are protective enough to meet the legal needs of the Board (as well as the ESA agencies) and still give you valid data points for purposes of comparing the relative effects of flow v. habitat.

(Thinking out loud, I note that the habitat part won't be ready overnight, so maybe you should put your enhanced flow experiments at the front end. I'm SURE that will go over well.)

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